IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.12.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.1243 of 2007

Nagaraj @ Lolai Nagaraj @ Mohamed Esak ... Petitioner

vs.

1. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai.9.

2. The Commissioner of Police,
Detaining Authority,
Coimbatore City.

3. The Inspector of Police,
Law and Order,
B.12, Ukkadam Police Station,
Coimbatore City. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records relating to the detention order C.No.46/G/IS/2007, dated 24.05.2007, passed by the second respondent, set aside the same and direct the respondents to produce the petitioner detenu before court and set him at liberty forthwith.

For Petitioner : Mr.C.Regurajan

For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor.

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner herein challenges the impugned order of detention, dated 24.05.2007, whereby, he has been detained as

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'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. It is seen from the grounds on which the detention order came to be passed that on 17.05.2007 at 13.00 Hours, before the Inspector of Police, B-12 Ukkadam L & O Police Station, Coimbatore City, one P.K.Ummar/complainant, appeared along with Head Constable Kamalakannan, who produced the detenu. In the written complaint lodged by the complainant, it was stated that on 17.05.2007 at 11.30 Hrs., when the complainant was doing watch repair business at Podanur Road, the detenu came there and demanded money to consume liquor and since he refused to accede to such demand, the detenu acting violently, snatched Rs.100/- from complainant's shirt pocket, kicked away all the watches kept for repair, also took a watch and started running away from that place. When the complainant tried to chase him, the detenu took out a knife from his waist and tried to stab the complainant, however, the complainant thwarted the attack, whereupon, the detenu threatened him to leave that place as otherwise, he would kill him. On seeing his atrocious activities, people started running helter-skleter and normalcy of the area came to a standstill. At that time, police personnel who came there on routine rounds apprehended the detenu. A case was registered in B-12 Ukkadam P.S. Cr. No.295 of 2007 for offences under Section 392 read with Sections 397 and 506 IPC. The Detaining Authority, taking note of four adverse cases to the credit of the detenu, clamped the order of detention branding him as 'Goonda'.

3. Learned counsel for the petitioner contends that the Detaining Authority has stated in the grounds of detention that the detenu, in his statement, had admitted the offence committed by him in the adverse cases, however, the fact remains, no such admission has been made. Inasmuch as the Detaining Authority has mentioned misleading facts in the grounds of detention, it is quite apparent that he has mechanically passed the detention order without application of mind; that being so, the detention order is vitiated.

4. With regard to the contention of the learned counsel, we verified the materials available on record. In paragraph No.6 of the grounds of detention, the Detaining Authority has stated as follows:-

> " Further, Thiru.Nagaraj @ Lolai Nagaraj @ Mohammed Esak in his statement had admitted the offence committed by him near X-8 Hotel, Ukkadam-Podanur Road, Coimbatore at 1130 hours on 17.05.2007 and the offence committed by him in the adverse cases. "

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It is seen that in the translated copy of the order of learned Judicial Magistrate No.V, Coimbatore, in C.C. No.476 of 2005 (relating to adverse case No.1), available at page No.5 of the Booklet, it is mentioned that the accused admitted the guilt, however, in the fair copy of the order of the Magistrate available at Page No.4 of the Booklet, it is stated that the accused 'Pleaded not guilty'. As rightly pointed out, the version of the Detaining Authority with reference to the above aspect is an apparent discrepancy on the face of records and it resulted in the detenu being deprived from making an effective representation. That being so, the impugned order of detention is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the order of detention is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary to Government (Home), Prohibition and Excise Department,Secretariat, Chennai.9.

2. The Commissioner of Police/Detaining Authority, Coimbatore.

3. The Inspector of Police, Law and Order,
B.12, Ukkadam Police Station, Coimbatore City.

4. The Public Prosecutor, High Court, Madras.

5. The Superintendent, Central Prison, Coimbatore.

6.The Joint Secretary to Government,
Public (Law and Order) Fort St.George, Chennai-9.

+2ccs to Mr.C.Regurajan,Advocate Sr 71666,71389

NTK (CO)
km/17.12.

HCP No.1243 of 2007.

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